IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14821 of 2004

For Approval and Signature:
THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DINESH PHARMACEUTICALS PVT.LTD. &2 - Petitioner(s)

Versus

AVANI D PATEL - Respondent(s)

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Appearance :

MR BRIJESH S PATELfor Petitioner No(s).: 1,2.
MR. S.N.SOPARKAR, Ld. Senior Counsel with MR CHIRAYU A MEHTA for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 30/06/2005

ORAL JUDGMENT

1. By filing instant petition under Articles 226 and 227 of the Constitution of India, petitioners seek to challenge the order dated 20.10.2002 recorded below application exh.36 in Special Summary Suit No. 113 of 2000 by the learned Civil Judge (SD), Anand by which the application filed by the petitioner to dismiss the suit on the ground that suit is barred by principle of resjudicata, has been dismissed.
2. According to the petitioners the respondent is the share holder of the petitioner Company and the respondent had chosen to be the Director of the petitioner company by entering into MoU with the sitting Directors on 1.4.1998 and thereby the respondent had undertaken to contribute investments in the company for the survival of the Company as the Company was facing financial crises at the relevant time. Thus the respondent had entered into as Director with the condition precedent to contribute the amount and to invest the same in the company and accordingly Form No.32 was filed in ROC. According to the petitioners, after having joined as Director of the Company, major parts of the Management of the Company was taken over by the respondent and the respondent had invested certain amount in piecemeal by way of contribution to equity shares capital and for participating in the new joint venture. It so happened that ultimately the respondent had chosen to resign as Director from the Company and thereby he has left the Company by submitting the resignation to the Company.
3. The respondent thereafter filed an application vide No. 23 to 25/58A(9)CLB/WR/2002 along with the supportive documents before the Company Law Board ('the Board' for short), for recovery of the amounts which were canvassed as Deposit and contributed in the Company by the respondent in pursuance of the MoU. The said matter has been dismissed by the Board on the ground that the deposit claimed is in fact not the 'deposit' in terms of Rule 3 of Companies Acceptance of Deposit Rules, 1975, and it has been held that the said amounts have been brought by the respondent for transfer of shares and participation in new joint venture and therefore, the application of the respondent under Section 58A(9) of the Companies Act, 1956 ('the Act' for short) was dismissed on 10.6.2002. The respondent thereupon filed OJ Appeal No. 12 of 2003 before the Division Bench of this Court under Section 10F of the Act. This Court dismissed the said appeal vide order dated 25.8.2004.
4. Thereafter the respondent filed Special Summary Suit No. 113 of 2002 before the Civil Court (SD), Anand after filing of the OJ Appeal. In the said Suit the petitioners have filed an application exh.36 to dismiss the suit on the ground that the bar of resjudicata is

operating against the respondent as the matter has already been decided by the Board. The said application has been rejected by the learned Civil Judge (SD), Anand, which has given rise to the present petition.

5. Mr. Brijesh S Patel, learned advocate of the petitioners contended that the respondent has filed suit after filing of the OJ Appeal against the order of the Board on the same subject matter and same cause of action and with exactly identical prayer as prayed for in the application before the Board. It is further contended that the respondent has also relied upon the same documents in the said suit which were produced before the Board alongwith the applications. Moreover the respondent had deliberately not disclosed in the said Spl. Summary Suit any facts about the order of the Board. He had also not disclosed the fact that the Appeal has been preferred against the said order. Therefore, the issue has already been decided between the parties by the Board and therefore the Suit is not maintainable. However, the learned trial Judge has ignored all these facts and rejected the application, which according to him is against all cannons of law as the suit is barred by principle of resjudicata. He, therefore urged that that this petition deserves to be allowed by accepting the application exh.36.
6. Per contra Mr. S.N.Soparkar, learned Senior Counsel of the respondent contended that the provision of Section 11 of the Code of Civil Procedure ('the Code' for short) does not apply to the facts of the present case as, according to him the application filed before the Board by the respondent was not a suit as required under Section 11 of the Code so as to make the bar of principle of resjudicata applicable to the Summary Suit. It is further contended by him that the Board has not decided the matter on merits. It has merely held that application of the applicant depositor does not lie under Section 58A(9) of the Act and the same is dismissed. However, depositors are at liberty to take action as may be legally advised. Therefore, according to him, no infirmity is committed by the learned trial Judge in rejecting the application. It is also contended by him that though this is a petition stated to have been filed under Articles 226 and 227 of the Constitution of India, infact this is a petition under Article 227 of the Constitution of India and since no jurisdictional error is committed by the learned trial Judge, this petition lacks merit and deserves to be rejected.
7. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned order, statutory provisions contained under the Code as well as the Act.

8. So far as the factual matrix is concerned, there is no dispute. There is also no dispute that the Board has rejected the application filed by the respondent under Section 58A(9) of the Act on the ground that from the documents produced by the respondent the deposit claimed by him cannot be termed as Fixed Deposits as they do not indicate the period of Deposit, terms and conditions of acceptance of deposits in terms of Rule 3 of the Companies Acceptance of Deposit Rules, 1975 and therefore it was rejected reserving liberty to take such action as may be legally advised to the depositors.
9. The application filed before the Board by the respondent was not a suit as required under section 11 of the Code so as to make the bar of principle of resjudicata applicable. On bare look to Section 58A(9) of the Act, it is clear that summary procedure is provided in favour of depositors to take the money back promptly without resorting to the proceeding in Civil Court by way of Summary procedure. However, the Board found that the amounts claimed are not 'deposits' within the meaning of the Companies Acceptance of Deposits Rules, 1975, and therefore refused to adjudicate, reserving liberty to the parties to take appropriate steps to recover the same from the person to whom the amount was advanced or from the borrowers. It is required to be noted that against the order of the Board, the respondent has filed OJ Appeal which was simply dismissed on the ground that no question of law is involved in the petition as required under Section 10F of the Act and the Court did not examine the merits of the case. Therefore, the submission that the Board has already decided the issue, has no substance. So far as the provision of Section 11 of the Code is concerned, it in terms stipulate that the Court having jurisdiction to decide the issue must have decided the issue in suits. So far as the decision rendered by the Board is concerned, it is not a decision rendered in a suit. In aforesaid view of the matter, according to this Court no infirmity is committed by the learned Civil Judge (SD), Anand in rejecting the application exh.36.
10. Besides this, the petitioners have field this petition under Articles 226 and 227 of the Constitution of India, but infact this is a petition filed under Article 227 of the Constitution of India.
11. In the case of Sadhana Lodh v/s National Insurance Company Ltd., (2003) 3 SCC 524, a Three Judge Bench of the Supreme Court has held that where a statutory right to file the appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the constitution of India.

12. It is settled principle of law that powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the Courts below and it cannot assume suo motu jurisdiction of appellate Court and correct every mistake assumed to have been committed by the Courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim &others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B.Gandhi v. M/s Gopinath, (1992) Supp. 2 SCC 312 (iv) State of Maharashtra v. Miland and others, (2000) 1 SCC 4.

13. In the case of Ouseph Mathai and others v/s. M.Abdul Khadir, (2002) 1 SCC 319, it is held that the petition filed under Article 227 of the Constitution of India cannot be treated like an extension of a statutory appeal or revision.

14. Seen in the above context there is no valid reason or justifiable ground to interfere with the impugned order, hence petition lacks merit and deserves to be rejected.

15. For the foregoing reasons, the petition fails and accordingly it is rejected, with no order as to costs. Rule is discharged. Interim relief granted at the time of issuance of rule stands vacated.

(A.M.Kapadia,J)

Jayanti*